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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ASCENDIS PHARMA A/S, ASCENDIS
PHARMA GROWTH DISORDERS A/S, and
ASCENDIS PHARMA, INC.,

Plaintiffs,

v.

BIOMARIN PHARMACEUTICAL INC.,

Defendant.

Case No. 4:25-cv-03302-YGR

**PLAINTIFFS' NOTICE OF
VOLUNTARY DISMISSAL WITHOUT
PREJUDICE**

1 Defendant BioMarin Pharmaceutical, Inc., filed a complaint against Plaintiffs (collectively,
2 Ascendis) in the U.S. International Trade Commission (ITC) alleging patent infringement.
3 Ascendis filed the instant declaratory judgment action with the object of obtaining a declaration
4 that all of its allegedly infringing activities to date fall within the safe harbor of 35 U.S.C.
5 § 271(e)(2). Ascendis has filed a Motion for a Speedy Hearing on the Applicability of the Safe
6 Harbor (Dkt. No. 32), which has been set for argument on July 15. BioMarin has filed a Motion to
7 Dismiss, or in the Alternative, Motion to Stay (Dkt. No. 31), also set for argument on July 15, in
8 which BioMarin argues that the safe-harbor issue should be litigated in the ITC rather than in this
9 Court.

10 Ascendis has decided to accede to BioMarin's preference to litigate the safe-harbor defense
11 in the ITC. Accordingly, Ascendis hereby gives notice of dismissal of the instant action without
12 prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), as Defendant has not yet answered or filed a
13 motion for summary judgment.

14 Ascendis provides further notice of its intent to re-file a declaratory judgment complaint
15 for non-infringement of U.S. Reissue Patent No. 48,267, which new action it plans to stay
16 pursuant to the mandatory stay provision of 28 U.S.C. § 1659 in favor of parallel ITC proceedings.
17 Ascendis is filing a new action rather than amending the complaint and moving to stay the instant
18 action in order to avoid any possible dispute about the applicability to the present action (which
19 has been pending for more than 30 days) of the mandatory stay provided by that statute.
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1 Dated: July 7, 2025

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